

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 20621 of 1994

Between:

- 1.Nekkanti Jhansi Lakshmi W/o.Dr.N.Narendra Prasad
Palakol West Godavari Dist
2. Talluri Bhanumathi W/o.Sreerama Chandra Murthy
Palakol West Godavari Dist
3. Arimilli Seethamahalaxmi W/o.Satyanarayana
Palakol West Godavari Dist

.... PETITIONERS

AND

- 1.The Government of Andhra Pradesh rep.by the Secretary to Government Revenue
(L.A) Department Secretariat Buildings,
Hyderabad
- 2 The Sub Collector and Land Acquisition Officer,
W.G.District

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, in the nature of writ of mandamus or any other appropriate writ direction or order, declaring GO.Ms.No.601, Revenue (LA) Department, Dt.19/06/1992 and the consequential award No.1/94-95 Dt.31/5/1994 passed by the Sub-Collector and Land Acquisition Officer, Narsapur, the second respondent in fixing the compensation for the coconut trees in accordance with the said GO and not in accordance with law as illegal and void and direct the 2nd respondent to pass a supplemental award, fixing the compensation for the coconut trees in accordance with law and pass such other order.

Counsel for the Petitioner: MR.E.MANO HAR

Counsel for the Respondent No.: GP FOR LAND ACQUISITION

The Court made the following:

-

ORDER:

Heard Sri E.Manohar, learned Senior Counsel appearing on behalf of the petitioner and the learned Government Pleader for the Land Acquisition.

The petitioners herein who claimed to be the owners of the land, which has been acquired by the respondents herein in pursuance of the provisions of the Land Acquisition Act, filed this writ petition, inter alia, seeking to declare the G.O. Ms. No. 601, Revenue (LA) Department, Dated 19.06.1992 and consequential Award No. 1/94-95 dated 31.05.1994 passed by the second respondent as bad, illegal and void.

The case of the petitioners in brief is that having acquired the land, the Acquisition Officer should have followed the procedure as contemplated under law. As per the provisions under Section 11(2) of the said Act, issued by the Collector who has to make a preliminary assessment which has to be considered before the Land Acquisition Officer and Award has to be passed on independent assessment. Instead of the same, the first respondent herein has issued the impugned G.O. Ms. No. 601, Revenue (LA) Department, dated 19.06.1992 fixing the value for the trees which is contrary to the teeth of the Section 11(2) of the said Act. It is also further submitted on behalf of the petitioner that subsequent to the Award dated 31.05.1994 the petitioners have also filed application under Section 18 of the said Act on 12.07.1994 seeking reference to the District Court for the purpose of determining the market value. However, having regard to the facts and circumstances of the impugned G.O, it is not possible for the authorities concerned to make any independent assessment. Hence, the writ petition.

The learned Government Pleader while opposing the Writ Petition submitted that it is only for the purpose of guidance the impugned G.O has been issued, which can be taken in to consideration and value has to be ascertained. Therefore, there is no illegality in issuing the said G.O. Further it is also submitted that the application filed by the petitioners for seeking reference to the Civil Court is still pending and hence, no order need be passed on merits.

Considering the submissions made on either side and also on perusal of material,

the only question falls for consideration is to whether the first respondent is contemplating to make an exercise in making any assessment in the teeth of the provisions under Section 11(2) of the Land Acquisition Act.

There is no dispute in regard to the fact that the petitioners' land is to an extent of Ac.3.4 cents situated at Siragalapalli Village, Elamanchili Mandal, West Godavari District was acquired in pursuance of the notification under Section 4(1) of the said Act dated 18.09.1993 for the construction of out-fall sluice on Nakkala Drain. Thereafter, the petitioners have made their claim at the rate of Rs.5 lakh per acre and further compensation of Rs.12,000/- for each coconut tree which are existing on the land, on the basis of the capitalization of income from the trees. However, second respondent-the land Acquisition Officer does not accede to the petitioners' request and passed an Award on 31.05.1994 by fixing the value for the trees basing on the details as given in G.O. Ms. No. 601, Revenue (LA) Department dated 19.06.1992.

On a reading of the provisions under Section 11(2) of the Land Acquisition Act, it is clear that the competent authority that has to make preliminary assessment is vested with the Collector and in each case, individually, such exercise has to be done basing upon the facts and circumstances of each case. Therefore, the question of exercising any power by the first respondent in general and by issuance of any such orders determining any value as contemplated in G.O. Ms. No. 601 Revenue (LA) Department is not sustainable. However, having regard to the fact that the Award already has been passed and the petitioners' remedy lies in seeking the reference under Section 18 of the said Act. It is not necessary to go in to elaborate with regard to exercise of powers under Article 226 of the Constitution of India, in accordance with law. Admittedly, the petitioners' application under Section 18 of the Land Acquisition Act, which was filed on 12.07.1994 is remained un-disposed and further there cannot be any objections for referring the matter to the Civil Court, since the said application is still pending as on today.

In the circumstances, the Writ Petition is accordingly allowed, directing the first respondent to refer the matter to the Civil Court for the purpose of determining the market value in respect of the land which is acquired along with trees and pass orders in accordance with law. It is needless to mention that while making said enquiry the amounts as shown or as determined in G.O. Ms. No. 601, Revenue (LA)

Department dated 19.06.1992 need not be relied on or give effect. The referring Court shall have to conduct enquiry independently and determine the market value, both over the land as well as the trees as claimed. No costs.

26-08-2004

kvrn/bss

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the twenty six day of August two thousand and four.

To

- 1.The Government of Andhra Pradesh rep.by the Secretary to Government Revenue (L.A) Department Secretariat Buildings,
Hyderabad
- 2 The Sub Collector and Land Acquisition Officer,
W.G.District
3. 2 CC to GP for Land Acquisition, High Court Bldgs.,Hyd.(OUT)
4. 2 CD copies.